

**BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD**

In the Matter Between

  
Grievant

Record of Proceedings  
FSGB Case No. 2017-068

And

August 21, 2019

Department of State

**DECISION - REVISED**

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For the Foreign Service Grievance Board:

Presiding Member:

David P. Clark

Board Members:

Bernadette M. Allen

Lawrence C. Mandel

Special Assistant:

Andrew D. Large

Representative for the Grievant:

Bridget R. Mugane, Esq.

Representative for the Department:

Thomas M. Lipovski  
Attorney Advisor, HR/G

Employee Exclusive Representative:

American Foreign Service Association

## OVERVIEW

**Held** – That grievant fails to establish, by a preponderance of the evidence, that his grievance about alleged falsely prejudicial language in the Area for Improvement (AFI) statement of his 2015 Employee Evaluation Report (EER) has merit. Grievant successfully establishes that the Development Area (DA) statement and one paragraph in the Review Statement of his 2016 EER contain falsely prejudicial language. As relief for the 2016 EER, the Board orders expungement of falsely prejudicial language from the EER, a one-year extension of grievant’s time-in-class (TIC), reconvening of Selection Boards for 2016 and 2017, and back pay and interest for any promotion resulting from a Selection Board’s recommendation. Grievant may file a petition for attorneys’ fees pursuant to the Board’s policies and procedures.

**Summary** – Grievant, an FS-04 tenured Political Officer, joined the Foreign Service (FS, Service) in the Department of State in 2003 as an FS-05. He was last promoted in 2007, and his final two opportunities for promotion before TIC expiration were in 2015 and 2016. Having failed promotion on his final review, grievant is designated for mandatory retirement and separation from the Service, effective July 31, 2026, when he becomes eligible for immediate annuity.

Grievant challenges the Department of State (Department, agency) denial of his grievance appeal concerning two assessments of his performance as a Political Officer in [REDACTED]. He maintains that his April 2015 and April 2016 EERs contain misleading and damaging criticisms of his performance that are falsely prejudicial. Grievant also alleges that the Political Section Chief, his reviewer for the 2016 EER, obstructed his performance by transferring grievant’s core duties to other persons the reviewing officer favored.

The Department maintains that the EERs do not contain falsely prejudicial statements. In particular, the Department asserts that grievant’s 2015 EER presents an “extremely positive assessment” of grievant’s performance that reflects his mastery of the complex relationship with the host country’s opposition, his contributions to the Post’s strategic goals and his supervision of a subordinate that augmented productivity of post reporting. As it relates to the 2016 EER, the Department contends that the textual material contested by grievant was literally true. The Department also rejects grievant’s claim that his performance was obstructed by changes in his core responsibilities and maintains that the reviewing officer’s commentary on the relationship between grievant and his superiors is in compliance with the EER instructions.

Based on the Board’s examination of the record, we deny the claims regarding grievant’s 2015 EER, but grant, in part, grievant’s claims related to the 2016 EER. We find merit to the AFI statement in the 2015 EER; indeed grievant acknowledged the substance of the rating officer’s comment. We find the 2016 EER overall presents a positive assessment of grievant’s performance, but contains falsely prejudicial language in the DA statement and Review Statement. Thus, we grant, in part, the 2016 EER grievance appeal. We order expungement of falsely prejudicial language in the 2016 EER, a one-year extension of grievant’s TIC and reconstituted Selection Boards for 2016 and 2017 with back pay and interest if appropriate. We also authorize grievant to submit a request for payment of attorney’s fees and costs.

## DECISION

### I. THE GRIEVANCE

Grievant challenges the Department of State (Department, agency) denial of his grievance appeal concerning two assessments of his performance as a Political Officer in [REDACTED] specifically his April 2015 and April 2016 Employee Evaluation Reports (EERs).<sup>1</sup> Grievant maintains that both EERs contain falsely prejudicial passages. In addition, grievant alleges that the Political Section Chief, the reviewer for his 2016 EER, obstructed his performance during the rating period by transferring grievant's core responsibilities to other persons that the reviewer favored. As relief, grievant seeks expungement of the Area for Improvement (AFI) statement in the 2015 EER, removal of the 2016 EER in its entirety from his Official Performance File (OPF) together with insertion of a gap memorandum to cover that performance period, a one-year extension of his time-in-class (TIC), reconstituted Selection Boards (SBs) for 2015, 2016 and 2017, along with retroactive back pay and interest for any promotion, and any other remedies deemed just and proper.

### II. BACKGROUND

Grievant, an FS-04 tenured Political Officer, joined the Foreign Service (FS, Service) in the Department of State in 2003 as an FS-05. He has served as a Consular Officer in two overseas posts, a Foreign Policy Advisor at the Department of Defense, a Political Officer in two overseas posts and an International Relations Officer in the Department. This grievance relates to his Political Officer assignment in [REDACTED] for two rating periods.

Grievant was last promoted in 2007, and his last two opportunities for promotion before his TIC expiration were in 2015 and 2016. The Acting Director General of the Foreign Service

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<sup>1</sup> Both EERs will be referenced by year only throughout the decision, as both were prepared in April of the respective years.

and Director of Human Resources notified grievant by letter (dated August 3, 2016) that, failing promotion on his next review, his TIC expiration would take effect on May 28, 2017, subjecting grievant to mandatory retirement from the Service under Section 607 (c), effective July 31, 2026.<sup>2</sup> Grievant was not promoted and is now designated for separation from the Service in 2026.

Grievant filed an agency-level grievance on April 17, 2017. The agency denied his grievance on October 23, 2017. He appealed that decision to the Foreign Service Grievance Board (FSGB, Board) on December 21, 2017, and filed his supplemental submission on May 7, 2018. The Department submitted its response to the supplemental submission on August 31, 2018, and grievant filed his rebuttal to the agency's submission on October 1, 2018. The Board closed the record of proceedings on May 3, 2019.

### **III. POSITIONS OF THE PARTIES**

#### **A. The Grievant**

Grievant contends that the AFI statement in his 2015 EER, and the Developmental Area (DA) statement<sup>3</sup> and Review Statement in his 2016 EER contain misleading and damaging criticisms of his performance that are falsely prejudicial. He maintains that the criticisms in the 2016 EER were particularly detrimental to him because of absences of recommendations for promotion from his rating and reviewing officers.

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<sup>2</sup> See Grievance Appeal Submission (GAS) – Exhibit 5. The letter notes that grievant has not reached age fifty and/or had 20 years of creditable service. Per 3 FAM 6213.6, Foreign Service personnel not eligible for voluntary retirement under Section 811 of the Foreign Service Act of 1980 (Act), as amended, or not qualified for immediate annuity under Section 609 of the Act, will not be separated until eligible for immediate annuity.

<sup>3</sup> In rating year 2016, the Department revised the DS-5055 form (U.S. Foreign Service Employee Evaluation Report). The AFI Section was replaced with a DA Section.

## **2015 EER**

Grievant challenges the following AFI statement.

Early in the rating period, I asked [Grievant] to keep me more in the loop on his activities so I could have a broader picture of our work with the opposition. [Grievant] has continued to provide me, the rest of the section, and the Front Office with updates since that counseling. I am confident he will continue to keep us informed in the future.

Grievant attests that he kept his supervisor and others informed by including his activities in the Political Section's shared calendar, thus contends that the AFI statement is misleading and falsely prejudicial. He contends that the EER criticism is falsely prejudicial and misleading because a reader could not know the reason he did not divulge in advance of meetings with some of his contacts full contact information on the shared office calendar, out of concern that the rating officer (his supervisor) might choose to attend the meetings, "potentially jeopardizing and chilling contacts." In addition, he attests that he heeded his initial reviewing officer's advice to withhold some information until an appropriate time because the rating officer "made a practice of poaching information to take credit for herself and minimizing grievant's contributions." Further, grievant notes that the reviewing officer opined that the rating officer did not treat grievant with the professional respect deserved. In an email exchange between grievant and his first reviewing officer, the latter stated that the rating officer "unnecessarily made life difficult for [grievant], played favorites, and did not acknowledge [grievant's] accomplishments, nor did she adequately counsel him, provide constructive feedback, or treat him as she treated the others." Moreover, the reviewing officer expressed concern that, upon his departure from post, when he no longer could intervene on grievant's behalf, the rating officer would set grievant up to fail. Thus, he suggests that grievant acted prudently with regard to the shared calendar.

Grievant notes inconsistencies in the rating officer's explanations about the criticism she wrote in the AFI statement, thus questions her credibility. He points out that the rating officer initially attested that grievant was not in the habit of maintaining a shared calendar and that she asked him to maintain a calendar so that other Section members would know grievant's whereabouts.<sup>4</sup> Grievant questions the rating officer's subsequent statement to HR/G, in which she expresses concern about grievant's alleged "lack of accountability and documentation of his work."<sup>5</sup> Grievant avers that the reviewing officer refuted the rating officer's allegations that he lacked productivity, as the Review Statement in the EER highlighted grievant's embrace of responsibilities with "energy and vigor" and described him as "a writer of rare ability" who led the post's reporting on the political opposition.<sup>6</sup>

In view of the above, grievant seeks expunction of the AFI statement.

### **2016 EER**

Grievant challenges what he maintains are falsely prejudicial statements in the EER, specifically the following criticisms in the DA Section and Review Statement (written by a new reviewing officer), respectively.<sup>7</sup>

DA Section: "Following the opposition's win in the legislative election, many of [grievant's] contacts were transitioned to the front office. I suggested he work to develop new projects and new contacts."

Review Statement: "[Grievant] has a collegial relationship with his peers; his relationship with his superiors was sometimes tense, but always professional. During the last quarter of the rating period, [grievant's] productivity declined as he struggled to deal with medical issues."

GAS at 11 (underlining added by grievant).

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<sup>4</sup> GAS, *See* Department Decision (AGS 2017-043) at.2.

<sup>5</sup> Agency Response to Supplemental Submission, Exhibit B, p.1.

<sup>6</sup> GAS, Exhibit 1, 2015 EER, Section IX. Review Statement.

<sup>7</sup> The Board notes that for the 2016 EER, grievant's rating officer remained the same as the prior year, while a new reviewing officer had arrived to post in September 2015.

Grievant contends that the SBs that reviewed his 2016 EER were not provided information about the true circumstances to which he was subjected at post. He not only avers that he was obstructed from performing his core responsibilities when most of the contacts he had developed were transitioned to the front office, but also attests that much of the reporting duties in his portfolio were transferred to an officer who was junior to grievant's rank and of another race. Grievant states that he suspected racial bias because the reviewing officer had intimated it was easier to work with the other officer because they both thought similarly.<sup>8</sup>

Grievant attests that he was not re-assigned substantive projects and, instead, was tasked busy work: a cable on a massacre, a "thank you" note and an update on student organizations. He maintains that his supervisor did not collaborate with him during the rating period to establish work requirements, as mandated in the EER instructions.<sup>9</sup> Grievant points out that FSGB precedent has held that a rated employee cannot be faulted where performance was obstructed.<sup>10</sup> He suggests that the unilateral decision to transfer the contact list, which he diligently worked on to prepare for host country elections, conflicts with agency procedures as they relate to formulation of work requirements.<sup>11</sup> Grievant alleges that he was left on his own to develop new projects and new contacts with student groups that he contends were of little to no interest to readers in Washington. Consequently, grievant attests that he became demoralized and frustrated, to the point of depression, by not being allowed to perform his job. He contends that

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<sup>8</sup> GAS at 18 and 21. While grievant suspected bias, we note that he does not allege he was a victim of discrimination based on race in violation of Title VII of the Civil Rights Act of 1964.

<sup>9</sup> See DS-5055i Form EER Form Instructions, Section III. Employee's Job and Work Requirements, pp 8-9. The rating officer should complete both the Section III A. Job Description and III B. Work Requirements in collaboration with the rated employee, and the concurrence of the reviewing officer.... (Note: These instructions apply to both the DS-1829 Form and the DS-5055 Form. End note.)

<sup>10</sup> See FSGB 1993-029 (March 7, 1994).

<sup>11</sup> See 3 FAM 2811.2 Objectives. The objectives of the personnel evaluation program are to enhance member efficiency and . . . by: . . . (2) Assuring that each member participates in the formulation of and understands the work requirements, goals, and priorities established at the beginning of the rating period; and (3) Establishing a constructive dialogue between supervisors and subordinates to continue throughout the rating period.

the rating and reviewing officers' respective responses to inquiries from the agency's Grievance Office (HR/G) about the changes of core responsibilities in his portfolio reveals that they lack credibility. Moreover, grievant maintains that the criticisms in the 2016 EER should be invalidated because the SBs were in the dark about the true circumstances to which he was subject at post. He opines that the falsely prejudicial language about his productivity is especially damaging because the rating and reviewing officers did not make recommendations for his promotion.

In sum, grievant seeks, among other things, expungement of the AFI statement from his 2015 EER; removal of the 2016 EER in its entirety from his OPF together with insertion of a gap memorandum to cover that performance period; a one-year extension of his TIC; reconstituted SBs for 2015, 2016 and 2017; retroactive back pay and interest for any promotion resulting from a Selection Board's recommendation; and payment for attorney's fees and costs.

#### **B. The Agency**

The Department stands by the language included in the AFI and DA statements in the grievant's respective 2015 and 2016 EERs.

#### **2015 EER**

The Department maintains that grievant's EER presents an "extremely positive assessment" of his performance that highlights his mastery of the complex relationship with the host country's opposition, his supervision of a Political Specialist that augmented the Section's reporting output, and his establishment of the Mission's strategy for host country elections that "satisfied the Post's strategic goals of defending and strengthening democratic practices, institutions, and values." The agency points out that the reviewing officer characterized relations

between the rating officer and grievant as “professional and productive,” and that the rating and reviewing officers advocated for grievant’s immediate promotion.

The Department maintains that the AFI statement is justified because the rating officer expressed concern that grievant was not in the habit of maintaining a shared calendar of meetings and that she had asked him to include his activities in the shared calendar to keep others informed of his whereabouts. The Department rejects the allegation that the rating officer took undue credit for grievant’s work or that she marginalized his contributions to the Mission. The agency holds that grievant’s refusal to provide to his supervisor information that essentially belonged to the Department cannot be justified; consequently, it finds the criticism in the AFI statement to be accurate.

### **2016 EER**

As it relates to grievant’s 2016 EER, the agency rejects grievant’s claim that his performance was obstructed by the change of some responsibilities in his portfolio. It notes that provisions of the EER instructions establish that an employee’s job duties may be changed during the rating period.<sup>12</sup> The Department maintains that any reassignment of contacts for whom grievant previously was responsible, or any change of duties during the rating period cannot be construed as “an impermissible obstruction of performance” of grievant’s assigned duties because “by definition the duties at issue were no longer his to perform once they were reassigned.” The Department maintains that the reviewing officer made clear to grievant that despite the transfer of some responsibilities to another officer, grievant’s portfolio “remained largely intact.” On the matter of productivity, the reviewing officer attests that grievant “conceded that certain projects he had been assigned, but apparently had not yet completed,

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<sup>12</sup> See DS-5055i Form EER Instructions, Section I. Certification - Work Requirements and Counseling, pp 5-6.

indeed ‘fell within his portfolio.’” Further, the reviewing officer maintains that grievant acknowledged that the taskings of a cable on a massacre, front office correspondence and an update on student organizations were not busy work. The agency contends that grievant’s superiors reduced his taskings to “allow him to recover” from medical issues. They allege that, from late December 2015, grievant had “six plus weeks of nearly zero input” and, in late February 2016, grievant was unable to complete a small number of assigned tasks. The agency also points out that the grievance appeal does not involve a claim that grievant did not understand his work requirements at the commencement of the rating period.

As for language describing the grievant’s relationship with his supervisors, the Department maintains that the reviewing officer merely complied with the directive in the EER instructions.<sup>13</sup> Moreover, it contends that grievant did not object to the mention of the “tense relationship” noted in the Review Statement when it was discussed with him in draft form.

The agency discounts grievant’s allegations that his superiors were biased against him because of race. It emphasizes that neither a difference of opinion on some issues nor selection of another officer, who happens to be of another race, to take notes at certain meetings the grievant wanted to attend, is evidence of racial bias.

In view of the above, the Department maintains that the grievant has failed to establish his grievance has merit.

#### **IV. DISCUSSION AND FINDINGS**

In grievances involving non-disciplinary matters, grievant bears the burden of establishing, by a preponderance of the evidence, that the grievance is meritorious.<sup>14</sup>

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<sup>13</sup> See DS-5055i Form EER Instructions, Section VI. Review Statement, p. 13.

<sup>14</sup> See 22 Code of Federal Regulations (CFR) § 905.1.

After this Board's analysis of the parties' respective positions on the two EERs, we deny the claims regarding grievant's 2015 EER, but grant, in part, grievant's claims related to the 2016 EER.

### **2015 EER**

The Board deems the overall assessment of grievant's performance in the 2015 EER to be laudatory. While we acknowledge discrepancies in the rating officer's explanation of her motivation for the criticism in the AFI statement, we found merit in the criticism because the grievant essentially admitted to having withheld information from the rating officer on the advice of the reviewing officer. The reviewing officer's response to grievant's email inquiry about the circumstances at post during the reviewing officer's tenure serves as evidence of grievant's motivation to withhold information:

If I can recall correctly, while I was a Political Counselor, I was not all that concerned with your sharing contact information with folks because I was not going to allow [rater] to poach them. I did, however, suggest shortly before I departed that you keep some information in your back pocket – to be released at the appropriate time – so that others would not take credit for all the hard work you were doing.

The Board recognizes it is highly unusual for the reviewing officer to counsel an employee to withhold information from a rating officer; nevertheless, we find the AFI statement has merit because grievant did not deny that he withheld information, and instead attested to his motivation for doing so, despite the rating officer's contention that she needed to know grievant's whereabouts and information about his activities after he met with the contacts. At the end of the day the contacts properly belonged to the Embassy, not the employee, and withholding them, even when grievant's actions were not out of negligence or for nefarious reasons, was not appropriate.

Moreover, the AFI speaks to the rating officer's concern that grievant was not keeping her "in the loop of his activities" and it appears grievant addressed that criticism of his performance because the rating officer credited him in the same AFI statement for providing, after her counseling with grievant, updates to her, the rest of the section and the front office. In the Board's view, the EER presents a balanced, fair appraisal that notes a deficiency that grievant corrected during the rating period. No employee's performance is perfect and the FSGB has consistently articulated that "the critical test is whether an EER fairly and accurately describes and assesses performance and potential with adequate clarity and documentation to constitute a reasonably discernible, objective and balanced appraisal. This is a question that must be answered in each case based on its particular circumstances."<sup>15</sup> Grievant has not presented evidence establishing that the account about the shared calendar is materially inaccurate or unbalanced. Moreover, the rating officer advocated for grievant's immediate promotion, and the reviewing officer endorsed the rater's recommendation with the suggestion that grievant be number one on the promotion list. Thus, we hold that 2015 EER is a balanced and fair appraisal of grievant's performance, and that grievant has not met the burden he carries to prove, by a preponderance of evidence, that the AFI statement is inaccurate or falsely prejudicial. We deny the grievance appeal as it relates to the 2015 EER.

### **2016 EER**

The Board finds the DA statement in the 2016 EER defective because the rater failed to provide guidance to the grievant aimed at strengthening his skills for greater responsibilities. The rating officer listed Communication and Foreign Language as a specific competency for development, but simply stating that grievant's "contacts were transitioned to the front office"

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<sup>15</sup> See FSGB 1993-015 (December 23, 1993) and 1999-080 (July 13, 2000).

and suggesting that he “work to develop new projects and new contacts” falls short of guidance to strengthen one’s skills. In fact, the language in the DA statement validates the 2015 reviewing officer’s concern that, after his departure from post, the rating officer would possibly set grievant up to fail. The rating officer’s suggestion, without collaboration with grievant, that he develop new projects is out of compliance with agency procedures in 3 FAH-1 H-2815.1 that speak to the responsibilities of the rating and reviewing officers.<sup>16</sup> Discrepancies in the rating and reviewing officers accounts about changes in grievant’s portfolio also raise questions as to whether the requisite counseling was conducted to ensure that grievant had a clear understanding of duties and requirements for satisfactory performance.<sup>17</sup> The record shows that the rating officer attested that the reviewing officer had decided in early January 2016 to change grievant’s portfolio, yet the reviewing officer’s record of a March 15, 2016, meeting indicates that he had informed grievant that his portfolio had not changed. However, the record also shows that in December 2015, the reviewing officer had informed grievant that he was contemplating having another officer cover the National Assembly portfolio. Thus, the failure of grievant’s superiors to collaborate and document with him the changes in his core responsibilities not only created disarray for grievant, but also was fundamentally unfair to him.

As it relates to tension with superiors that the reviewing officer set forth in the Review Statement, the record shows that there was a breakdown in communication between grievant and his supervisors at the point of the new reviewing officer’s arrival at post. The record reveals that

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<sup>16</sup> See Foreign Affair Handbook (FAH). 3 FAH-1 H-2815.1 General Responsibilities of Rating and Reviewing Officers. a. *There must be* an understanding between *the* rating officer and *rated member* about the requirements of the position: (1) *The rated member’s detailed work requirements and DS-5055 work responsibilities* should be *formalized* in writing within 45 days of the beginning of the rating period and amended, as necessary, with each change of assignment, assumption of additional duties, or other circumstances which warrant a review of performance against the standard of work expected of the member.

<sup>17</sup> See 3 FAH-1 H-2815.2. 3 FAH-1 H-2815.2 Rating Officers. In addition to the responsibilities outlined in 3 FAH-1 H-2815.1, rating officers are responsible for: (1) Ensuring that *rated members* have a clear understanding of their *work requirements* and of the requirements for satisfactory performance.

the reviewing officer stated a preference to work with an officer who thought more like himself. Undoubtedly, the decision to strip away grievant's core responsibilities and transfer them to an officer that was junior to grievant's rank contributed to the tension between grievant and his superiors. Moreover, the "transition" to the front office of grievant's list of contacts that he had worked so diligently to develop likely heightened the tension between the parties as well. While the reviewing officer alleges that grievant's "productivity declined" in the last quarter of the rating period due to struggles with medical issues, and notes in his response to the HR/G inquiry that grievant was unable to complete tasks, he does not document with examples in the EER how grievant's performance declined or adversely affected office productivity for one quarter of the rating period. The Board could not clearly determine from the record whether it was grievant's medical issues, or the undocumented change in his portfolio that affected grievant's productivity during the rating period. In fact, the Regional Medical Officer's report, prepared one month before the end of the rating period, shows that grievant was in almost full remission from his health issue.<sup>18</sup>

As it relates to grievant's opinion that his work requirements lack substance, the Board finds that claim unsubstantiated. The work requirements reflect grievant as the lead action officer on political reporting in the Section. We do, however, note the rating officer's failure to discuss with grievant the modification of his work requirements after core responsibilities were transferred to another officer. The rating officer had an obligation to collaborate with grievant on a revision of the work requirements to reflect his true responsibilities. Regardless of the front office motivations to transfer the core responsibilities to another officer, the instructions for preparation of the EER clearly state, "the work requirements statement should be modified

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<sup>18</sup> See Agency Response to Supplemental Submission, Exhibit C.

during the rating period to reflect any changes in the work requirements.” Additionally, the EER instructions indicate, as it relates to ensuring fairness, “In situations where employees are not performing at an acceptable level, they must be counseled and afforded an acceptable period of time to improve.” Clearly the DA statement does not provide any information about deficiencies in grievant’s performance, nor does it provide guidance on how he might strengthen skills he would need to prepare for greater responsibilities in the future. Nor does the record show that counseling sessions were held prior to the change of responsibilities to specify deficiencies in grievant’s performance and address how any such deficiencies might be corrected. Thus, in view of the circumstances that grievant faced at post together with the lack of meaningful guidance from his superiors, we find that grievant has met his burden of proving, by a preponderance of the evidence, that the portions of the 2016 EER identified in the grievance were falsely prejudicial.

Grievant alleges that racial bias played a role in the modification of his core responsibilities, but the record presents no more than speculation on grievant’s part. We also note that grievant did not formally file a claim of discrimination under Title VII as part of his grievance appeal. Thus, the Board is unable to make a finding on grievant’s claim to support his claim.

On the matter of grievant’s productivity in the final quarter of the rating period, the Board reaches the conclusion that both grievant’s health and his superiors’ actions to reduce his taskings, were factors that very likely affected grievant’s work for one quarter of the rating period. The EER credits grievant’s several accomplishments during the rating period, such as bringing together over fifteen foreign missions to strategize on international elections observation, successful management of a visit to the host country from the U.S. Senate Foreign

Relations Chair from whom he received praise, his stint as Acting Political Counselor, among other things.

In view of all the above, we grant the grievance appeal in part; specifically, expungement of the DA statement and the third paragraph of the review statement from the 2016 EER, together with other remedies as noted below.

## **V. DECISION**

We deny the grievance appeal for the 2015 EER, finding no merit to grievant's charge that the evaluation is falsely prejudicial. We grant, in part, the grievance appeal with respect to the 2016 EER, finding the DA statement and third paragraph of the Review Statement falsely prejudicial. We order:

- 1) Expungements of the following from the 2016 EER:

The DA Statement:

Following the opposition's win in the legislative election, many of [grievant's] contacts were transitioned to the front office. I suggested he work to develop new project and new contacts.

The third paragraph of the Review Statement:

[Grievant] has a collegial relationship with his peers; his relationship with his superiors was sometimes tense, but always professional. During the last quarter of the rating period, [grievant's] productivity declined as he struggled to deal with medical issues.

- 2) a one-year extension of grievant's time-in-class (TIC),
- 3) a reconstituted Selection Board for 2016,
- 4) a reconstituted Selection Board for 2017 if he is not promoted as a result of the 2016 Selection Board,
- 5) a reconstituted Selection Board for 2019 if he is promoted by the 2016 reconstituted Selection Board,

- 6) retroactive back pay and interest for any promotion,
- 7) Grievant is authorized to submit a request for attorney fees, accompanied by supporting documentation, within thirty (30) days of the date of this Board's decision, in accordance with the Board's regulations.<sup>19</sup>

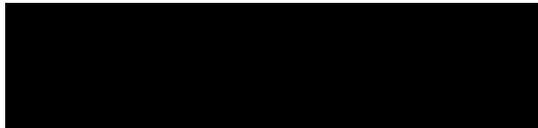
**For the Foreign Service Grievance Board:**



David P. Clark  
Presiding Member



Bernadette M. Allen  
Member



Lawrence C. Mandel  
Member

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<sup>19</sup> 22 CFR § 908.2.